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7 BILLY M. FELLS,  
8 Petitioner,  
9 v.  
10 ELVIN VALENZUELA,  
11 Respondent.

Case No. 15-cv-01390-JD

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28 **ORDER DENYING PETITION  
FOR WRIT OF HABEAS CORPUS  
AND DENYING CERTIFICATE  
OF APPEALABILITY**

Billy Fells, a pro se state prisoner, has brought a habeas petition pursuant to 28 U.S.C. § 2254. The Court ordered respondent to show cause why the writ should not be granted. Respondent filed an answer and a memorandum of points and authorities in support of it, and lodged exhibits with the Court. The petition is denied.

**BACKGROUND**

Fells pled no contest to three counts of forcible rape and two counts of robbery in exchange for a 20-year sentence. Clerk's Transcript ("CT") at 302-03. Fells had a prior strike, a prior serious felony conviction, and had served four prior prison terms. CT at 262-66. The trial court sentenced him to 20 years pursuant to the agreement. CT at 320-21. The California Court of Appeal affirmed the conviction. Answer, Ex. 6. Fells did not seek review in the California Supreme Court. Fells did file habeas petitions in state court which were all denied. Answer, Exs. 8-11. The underlying facts of the crimes are not relevant to the claims in the petition.

**STANDARD OF REVIEW**

A district court may not grant a petition challenging a state conviction or sentence on the basis of a claim that was reviewed on the merits in state court unless the state court's adjudication of the claim: "(1) resulted in a decision that was contrary to, or involved an unreasonable

1 application of, clearly established Federal law, as determined by the Supreme Court of the United  
2 States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in  
3 light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d). The first  
4 prong applies both to questions of law and to mixed questions of law and fact, *Williams v. Taylor*,  
5 529 U.S. 362, 407-09 (2000), while the second prong applies to decisions based on factual  
6 determinations, *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003).

7 A state court decision is “contrary to” Supreme Court authority only if “the state court  
8 arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if  
9 the state court decides a case differently than [the Supreme] Court has on a set of materially  
10 indistinguishable facts.” *Williams*, 529 U.S. at 412-13. A state court decision is an “unreasonable  
11 application of” Supreme Court authority if it correctly identifies the governing legal principle from  
12 the Supreme Court’s decisions but “unreasonably applies that principle to the facts of the  
13 prisoner’s case.” *Id.* at 413. The federal court on habeas review may not issue the writ “simply  
14 because that court concludes in its independent judgment that the relevant state-court decision  
15 applied clearly established federal law erroneously or incorrectly.” *Id.* at 411. Rather, the  
16 application must be “objectively unreasonable” to support granting the writ. *Id.* at 409.

17 Under Section 2254(d)(2), a state court decision “based on a factual determination will not  
18 be overturned on factual grounds unless objectively unreasonable in light of the evidence  
19 presented in the state-court proceeding.” *See Miller-El*, 537 U.S. at 340; *see also Torres v.*  
20 *Prunty*, 223 F.3d 1103, 1107 (9th Cir. 2000). In conducting its analysis, the federal court must  
21 presume the correctness of the state court’s factual findings, and the petitioner bears the burden of  
22 rebutting that presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

23 The state court decision to which § 2254(d) applies is the “last reasoned decision” of the  
24 state court. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991); *Barker v. Fleming*, 423 F.3d  
25 1085, 1091-92 (9th Cir. 2005). When there is no reasoned opinion from the highest state court to  
26 consider the petitioner’s claims, the Court looks to the last reasoned opinion. *See Nunnemaker* at  
27 801-06; *Shackelford v. Hubbard*, 234 F.3d 1072, 1079 n.2 (9th Cir. 2000). The standard of review  
28 under AEDPA is somewhat different where the state court gives no reasoned explanation of its

1 decision on a petitioner's federal claim and there is no reasoned lower court decision on the claim.  
2 In such a case, a review of the record is the only means of deciding whether the state court's  
3 decision was objectively reasonable. *Himes v. Thompson*, 336 F.3d 848, 853 (9th Cir. 2003);  
4 *Delgado v. Lewis*, 223 F.3d 976, 981-82 (9th Cir. 2000). When confronted with such a decision, a  
5 federal court should conduct an independent review of the record to determine whether the state  
6 court's decision was an objectively unreasonable application of clearly established federal law.  
7 *Himes*, 336 F.3d at 853; *Delgado*, 223 F.3d at 982.

8 As grounds for federal habeas relief, Fells alleges that: (1) trial counsel was ineffective  
9 because he miscalculated the potential maximum sentence for Fells' crimes; and (2) the trial court  
10 erred in failing to hold a hearing on Fells' mental competency and trial counsel was ineffective for  
11 not more thoroughly investigating Fells' competency.

## 12 INEFFECTIVE ASSISTANCE OF COUNSEL

### 13 Legal Standard

14 A claim of ineffective assistance of counsel is cognizable as a claim of denial of the Sixth  
15 Amendment right to counsel, which guarantees not only assistance, but effective assistance of  
16 counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The benchmark for judging any  
17 claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning  
18 of the adversarial process that the trial cannot be relied upon as having produced a just result. *Id.*

19 In order to prevail on a Sixth Amendment ineffectiveness of counsel claim, petitioner must  
20 establish two things. First, he must establish that counsel's performance was deficient, i.e., that it  
21 fell below an "objective standard of reasonableness" under prevailing professional norms.  
22 *Strickland*, 466 U.S. at 687-88. Second, he must establish that he was prejudiced by counsel's  
23 deficient performance, i.e., that "there is a reasonable probability that, but for counsel's  
24 unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "A  
25 reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

26 The decision whether or not to accept a plea offer is a critical stage of the prosecution to  
27 which the Sixth Amendment right to counsel attaches. *Turner v. Calderon*, 281 F.3d 851, 879 (9th  
28 Cir. 2002). Therefore, the two-part test of *Strickland* applies to counsel's ineffective assistance in

1 advising a defendant to accept or reject a plea offer. *See Hill v. Lockhart*, 474 U.S. 52, 57-58  
2 (1985); *Nunes v. Mueller*, 350 F.3d 1045, 1051-53 (9th Cir. 2003) (rejecting attempt to limit *Hill*  
3 to acceptance of plea offer). In light of the complexity and uncertainties that attend plea  
4 bargaining, it is especially essential that the habeas court respect the latitude for counsel's  
5 judgment that *Strickland* requires. *See Premo v. Moore*, 562 U.S. 115, 125 (2011) (9th Circuit  
6 erred in concluding trial counsel engaged in deficient performance by not moving to exclude a  
7 confession before advising client to take a plea bargain early in the proceedings).

8 Erroneous advice about the consequences of a guilty plea is insufficient to establish  
9 ineffective assistance; petitioner must establish a “gross mischaracterization of the likely  
10 outcome’ of a plea bargain ‘combined with . . . erroneous advice on the probable effects of going  
11 to trial.’” *Sophanthalvong v. Palmateer*, 378 F.3d 859, 868 (9th Cir. 2004) (omission in original)  
12 (citing *United States v. Keller*, 902 F.2d 1391, 1394 (9th Cir. 1990)).

### 13 Discussion

14 This claim was denied by the California Supreme Court without a reasoned opinion. This  
15 Court has conducted an independent review of the record to determine whether the state court's  
16 decision was an objectively unreasonable application of clearly established federal law. *Himes*,  
17 336 F.3d at 853; *Delgado*, 223 F.3d at 982.

18 On February 25, 2013, while Fells was present in court, the prosecutor briefly described  
19 the maximum exposure that Fells was facing:

20 The indeterminate term, the maximum exposure, if all counts and  
21 enhancements are found, would be 97 to life.

22 The determinate term, if again all counts and clauses were found  
23 along with his strike prior and prison priors, would be 23 years at 85  
percent.

24 Reporter's Transcript (“RT”) at 1-2.

25 The prosecutor also noted that the last offer extended to Fells was for him to plead to three  
26 counts of rape and a violation of Penal Code section 261 for three fully consecutive terms of eight  
27 years for a total of 24 years at 85 percent. *Id.* at 2. The trial court asked Fells about the offer, and  
28 he stated that he rejected it. *Id.* at 2-3.

1        Two days later, during jury selection and while Fells was present, the prosecutor provided  
2 a more detailed description of Fells' maximum exposure in the case. *Id.* at 131. The prosecutor  
3 concluded that there was a potential indeterminate sentence of 117 years to life and a potential 13-  
4 year determinate term. *Id.* at 131-34. The trial court concurred with the assessment. *Id.* at 134-  
5 35.

6        There was a discussion of a plea on the record with the trial court on the morning of March  
7 6, 2013, in the presence of Fells. Trial counsel stated that Fells believed there had been an offer of  
8 13 years in prison with half-time credits, but trial counsel did not recall that occurring. *Id.* at 141.  
9 The trial court recounted to Fells the history of plea negotiations. *Id.* at 142-43. Prior to the  
10 preliminary hearing the prosecution offered a sentence of 19 years and, while the defense had  
11 provided a counteroffer of 13 years, the prosecution had rejected it and not offered 13 years. *Id.* at  
12 142. After the preliminary hearing, the prosecution offered a plea of 24 years, but the defense  
13 declined it. *Id.* There was no discussion of half-time credits and all discussions of a plea required  
14 Fells serving 85 percent because the offenses were serious violent felonies. *Id.*

15        In the afternoon of March 6, 2013, the trial court informed trial counsel and Fells that the  
16 prosecution was prepared to offer a negotiated disposition that would total 19 years in state prison  
17 for Fells to plead to the three rape counts. *Id.* at 145. Trial counsel was speaking when Fells  
18 interrupted and stated, "I will take it right now. Right now." *Id.* at 146. Trial counsel told Fells  
19 that as an alternative, he could plead guilty to the two robberies and three counts of sexual battery  
20 and serve 22 years. *Id.* Trial counsel told Fells that these were his only options or proceeding to  
21 trial. *Id.* A short discussion occurred off the record and the jury selection continued. *Id.* at 48.  
22 The jury was selected, and the prosecutor indicated that any offers for settlement were being  
23 withdrawn. *Id.* at 149. Court was adjourned for the day, and opening statements for trial were set  
24 for the following day. *Id.* at 150-51.

25        The next day, March 7, 2013, the parties, with Fells present, informed the trial court that an  
26 agreement had been reached. *Id.* at 152. All of the details were stated on the record including that  
27 Fells would plead guilty to several counts and be sentenced to 20 years in prison. *Id.* at 152-56.  
28 Fells indicated that he understood the plea, and the trial court conducted the plea colloquy. *Id.* at

1 156-57. Fells repeatedly indicated that he understood. *Id.* at 156-63. Fells also signed, initialed,  
2 and dated a waiver on a plea form that repeatedly stated it would be a 20-year prison term. CT at  
3 297-98.

4 The California Supreme Court found that trial counsel did not provide ineffective  
5 assistance by miscalculating the maximum sentence. The California Supreme Court found that  
6 trial counsel was not deficient and there was no prejudice. These findings were not objectively  
7 unreasonable. Fells was aware of the prosecutors first informal calculation of the maximum  
8 sentence which was an indeterminate term of 97 years to life and a determinate term of 23 years.  
9 The prosecutor provided a more comprehensive review of the charges which carried a maximum  
10 indeterminate sentence of 117 years to life and a potential 13-year determinate term. The trial  
11 court concurred with this calculation. Fells does not state what trial counsel calculated that was  
12 allegedly incorrect, but even if trial counsel miscalculated the maximum, Fells was aware of the  
13 sentence based on the discussions with the prosecution and trial court. Fells has not shown  
14 deficient performance or prejudice.

15 Nor was there a miscalculation in the plea deal. The parties, including Fells, discussed at  
16 length with the trial court the final offer and the 20-year prison term. Fells indicated that he  
17 agreed and understood the ramifications of the deal. The trial court then performed the plea  
18 colloquy with Fells, who indicated he understood. There was also a written plea form that  
19 outlined the terms and the 20-year prison term.

20 Because there was an agreed upon 20-year prison term, Fells has failed to show or evenly  
21 sufficiently articulate how trial counsel was ineffective with respect to calculating the sentence.  
22 The prosecutor, trial counsel, trial court, and Fells agreed that 20 years would be the prison term.  
23 Fells has failed to show that the state court decision denying this claim was an unreasonable  
24 application of Supreme Court authority or an unreasonable determination of the facts. This claim  
25 is denied.

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## 1 COMPETENCY

2 Fells contends that the trial court erred in failing to hold a hearing on his mental  
3 competency and that trial counsel was ineffective for not conducting a more thorough  
4 investigation of Fells' competency.

### 5 Legal Standard

6 Due process requires a trial court to order a psychiatric evaluation or conduct a  
7 competency hearing *sua sponte* if the court has a good faith doubt concerning the defendant's  
8 competence. *Pate v. Robinson*, 383 U.S. 375, 385 (1966). To be competent to stand trial, a  
9 defendant must have (1) "a rational as well as factual understanding of the proceedings against  
10 him," and (2) "sufficient present ability to consult with his lawyer with a reasonable degree of  
11 rational understanding." *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam). The standard  
12 for determining competence to plead guilty is the same as that used to determine competence to  
13 stand trial. *Godinez v. Moran*, 509 U.S. 389, 397-402 (1993).

14 Where the evidence before the trial court raises a bona fide doubt as to a defendant's  
15 competence to stand trial, the judge on his own motion must conduct a competency hearing. *Pate*,  
16 383 U.S. at 385. Evidence of a defendant's irrational behavior, his demeanor at trial, and any prior  
17 medical opinion on competence to stand trial are all relevant in determining whether further  
18 inquiry is required, and one of the factors standing alone may, in some circumstances, be  
19 sufficient. *Drope v. Missouri*, 420 U.S. 162, 180 (1975). A lawyer's representation concerning  
20 the competence of his client also should be considered, as defense counsel will often have the  
21 best-informed view of the defendant's ability to participate in his defense. *See Medina v.*  
22 *California*, 505 U.S. 437, 450 (1992).

23 A state court's finding of competency to stand trial (as well as to plead guilty) is presumed  
24 correct if fairly supported by the record. *Deere v. Cullen*, 718 F.3d 1124, 1145 (9th Cir. 2013).  
25 No formal evidentiary or competency hearing is required for the presumption to apply. *Id.* at  
26 1144-45. Petitioner must come forward with clear and convincing evidence to rebut the  
27 presumption. *Id.* at 1145.

1       The Supreme Court has not determined the particular nature or quantum of evidence  
2 necessary to trigger a competency hearing. *Droppe*, 420 U.S. at 172. “There are, of course, no  
3 fixed or immutable signs which invariably indicate the need for further inquiry to determine  
4 fitness to proceed; the question is often a difficult one in which a wide range of manifestations and  
5 subtle nuances are implicated.” *Id.* at 180. In reviewing a claim of error resulting from the state  
6 court’s failure to hold a competency hearing, a federal habeas court may consider only the  
7 evidence that was before the trial judge. *Maxwell v. Roe*, 606 F.3d 561, 566, 568 (9th Cir. 2010).

8       **Background**

9       On October 29, 2012, Fells was referred to two psychologists for the purpose of evaluating  
10 his competency to stand trial. CT at 353. The two psychologists reviewed Fells’ mental health  
11 records and interviewed him. CT at 353-54, 368. The psychologists submitted reports in  
12 December 2012, and both found that Fells was competent to stand trial. CT at 359, 371. He pled  
13 no contest three months later.

14       Fells raised this claim in a supplemental brief on direct appeal to the California Court of  
15 Appeal. The California Court of Appeal set forth the background and denied this claim:

16       Were we to address the claims raised in appellant’s supplemental  
17 brief, we would reject them as unsupported by the record. At the  
18 hearing on appellant’s third *Marsden* motion, appellant claimed he  
19 suffered from “mental depression” and wanted to move to withdraw  
20 the plea because he “didn’t have clear judgment because of mental  
21 illness issues . . . he wasn’t thinking right, and that there were voices  
22 in his head saying that he needed to take the deal.” At that same  
23 *Marsden* hearing, appellant also complained about trial counsel’s  
24 “failure to pursue a competency proceeding.” In response, trial  
25 counsel stated he investigated appellant’s claims and obtained  
26 appellant’s medical records, which did not contain “anything that  
27 would indicate that Mr. Fells was incompetent; that he didn’t  
28 understand what was going on; that he was complaining of  
hallucinations[.]” As trial counsel explained, appellant’s medical  
records indicated jail personnel were “concerned that he might be  
either faking or exaggerating some of his symptoms, and that comes  
particularly after the change of plea.” Trial counsel also noted  
appellant did not raise the competency issue until after his change of  
plea. As counsel noted, “Mr. Fells wanted to proceed to jury trial on  
the issue of guilt or innocence in this case as fast as possible and did  
not want to have anything delay[ing] that for any reason. [¶] And  
Mr. Fells did not ask for a competency trial, and something came up  
for the first time after his change of plea.” At the conclusion of the  
hearing, the court determined there was no ineffective assistance of  
counsel.

1        *People v. Fells*, No. A139277, 2014 WL 982705, at \*1 n.2 (Cal. Ct. App. March 13, 2014)  
2        (alterations and omission in original).

3        Fells did not seek review in the California Supreme Court. He raised this claim again in a  
4        state habeas petition in the Alameda County Superior Court. Answer, Ex. 8. The superior court  
5        denied the claim as procedurally barred pursuant to *In re Harris*, 5 Cal. 4th 813, 829 (1993) and *In*  
6        *re Dixon*, 41 Cal. 2d 756, 759 (1953). Answer, Ex. 9. These citations noted that habeas relief is  
7        not available for claims that could have been raised on direct appeal. *Id.* The superior court also  
8        denied the claim alternatively on the merits stating, “[i]n any event, even if the claims were not  
9        procedurally barred they would be denied for failure to state a *prima facie* case for relief.” *Id.*  
10       The state habeas petition to the California Supreme Court was denied without comment or  
11       citation. Answer, Ex. 11.

12       **Discussion**

13       Respondent first argues that this claim is procedurally barred pursuant to the state court’s  
14       citations to *Dixon* and *Harris*. Though, respondent acknowledges that *Dixon* was found by the  
15       Ninth Circuit to be inadequate and did not bar federal habeas review. *Lee v. Jacquez*, 788 F.3d  
16       1124, 1133-34 (9th Cir. 2015). Respondent also argues that the claims fail on the merits and notes  
17       that the superior court alternatively denied the claim on the merits and the California Supreme  
18       Court denial is assumed to have denied the claim for the same reasons. *See Nunnemaker*, 501 U.S.  
19       at 803-04. AEDPA deference applies to this alternative holding on the merits. *See Clabourne v.*  
20       *Ryan*, 745 F.3d 362, 383 (9th Cir. 2014) *overruled on other grounds*; *Rolan v. Coleman*, 680 F.3d  
21       311, 320 (3d Cir. 2012); *Stephens v. Branker*, 570 F.3d 198, 208 (4th Cir. 2009). The Court will  
22       therefore look to the merits of the claim.

23       Fells argues that the trial court failed to hold a competency hearing. The record before this  
24       Court does not indicate who requested the referral to the psychologists, whether Fells was seeking  
25       a finding of incompetency, whether there was any type of hearing or whether the reports from the  
26       psychologists were just submitted to the court and parties, or whether Fells requested a formal  
27       hearing that was denied.

1        It is undisputed that two psychologists reviewed Fells' mental health records and  
2 interviewed him. They both concluded that Fells was competent to stand trial. The case  
3 proceeded and resulted in a plea several months later. The state court found that there was no  
4 error in Fells being found competent based on the psychologists reports and no error in failing to  
5 hold a hearing. These findings were not an unreasonable application of Supreme Court authority  
6 or an unreasonable determination of the facts.

7        Fells has failed to present sufficient evidence to show that he was not competent and that  
8 the failure to hold a formal hearing was an error. He simply states that he has various mental  
9 disorders. This is insufficient to obtain habeas relief. *See James v. Borg*, 24 F.3d 20, 26 (9th Cir.  
10 1994) ("Conclusory allegations which are not supported by a statement of specific facts do not  
11 warrant habeas relief."). Both psychologists discussed Fell's mental health history and his mental  
12 disorders but still found him competent. Fells is not incompetent simply because he has mental  
13 disorders. The question "is not whether mental illness substantially affects a *decision*, but whether  
14 a mental disease, disorder or defect substantially affects the prisoner's *capacity* to appreciate his  
15 options and make a rational choice." *Dennis v. Budge*, 378 F.3d 880, 890 (9th Cir. 2004). A  
16 review of the record does not indicate any problems with Fells capacity to understand his options  
17 and make a decision. The discussions Fells had on the record with the trial court regarding the  
18 plea negotiation history and his eventual plea do not indicate any issue with his ability to  
19 understand the proceedings and to understand his options. The trial court's finding of competency  
20 is presumed correct and the presumption applies even if there was no formal hearing. *Deere*, 718  
21 F.3d at 1145. Fells has failed to present clear and convincing evidence to rebut the presumption.  
22 *See Id.* at 1145. This claim is denied.

23        Fells also argues that trial counsel was ineffective for not conducting a more thorough  
24 investigation of Fells' competency. Fells only states that trial counsel lacked diligence and was  
25 ignorant of the facts while investigating Fells' mental health history. During a hearing with the  
26 trial court, trial counsel discussed his actions regarding the issue of Fell's competency. Trial  
27 counsel investigated the claims and obtained Fells' medical records and found no indication that  
28 Fells' was not competent to stand trial. Trial counsel noted that Fells' allegations of incompetency

1 were only raised after the change of plea when Fells moved to withdraw the plea.<sup>1</sup>

2 The state court found that trial counsel was not ineffective, and Fells has not shown that  
3 this conclusion was objectively unreasonable. He does not describe what other actions trial  
4 counsel should have done or what other evidence could have been discovered to support an  
5 argument that he was incompetent. Fells has not shown that trial counsel was deficient based on  
6 the investigation he performed of Fells' competency and by relying on the opinions of the  
7 psychologists. Nor has he demonstrated prejudice. *See Bible v. Ryan*, 571 F.3d 860, 871 (9th Cir.  
8 2009) (where petitioner contended he might have some type of organic brain dysfunction or  
9 disorder but offered no expert declaration that he in fact suffered from it, “[t]his speculation is not  
10 sufficient to establish prejudice”); *Gonzalez v. Knowles*, 515 F.3d 1006, 1015-16 (9th Cir. 2008)  
11 (“As to the failure to investigate mental health mitigation, Gonzalez does not contend that he  
12 actually suffered from a mental illness; he merely argues that *if* tests had been done, and *if* they  
13 had shown evidence of some brain damage or trauma, it *might have* resulted in a lower sentence.  
14 Such speculation is plainly insufficient to establish prejudice.”); *Williams v. Woodford*, 384 F.3d  
15 567, 611 (9th Cir. 2004) (given that mental-health experts evaluation of defendant did not support  
16 a mental-state defense, counsel’s decision not to investigate further or ultimately pursue the  
17 defense was a reasonable strategic choice). Fells has failed to demonstrate that the denial of this  
18 claim by the state court was objectively unreasonable. The claim is denied.

#### 19 CERTIFICATE OF APPEALABILITY

20 The federal rules governing habeas cases brought by state prisoners require a district court  
21 that issues an order denying a habeas petition to either grant or deny therein a certificate of  
22 appealability. *See* Rules Governing § 2254 Cases, Rule 11(a).

23 A judge shall grant a certificate of appealability “only if the applicant has made a  
24 substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), and the  
25 certificate must indicate which issues satisfy this standard. *Id.* § 2253(c)(3). “Where a district  
26 court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c)  
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28 <sup>1</sup> Two months after the plea, Fells’ filed a motion to withdraw the plea. RT at 168-69. The motion was denied. *Fells*, 2014 WL 982705, at \*1.

1 is straightforward: [t]he petitioner must demonstrate that reasonable jurists would find the district  
2 court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S.  
3 473, 484 (2000).

4 Here, petitioner has made no showing warranting a certificate and so none is granted.

5 **CONCLUSION**

6 For the foregoing reasons, the petition for writ of habeas corpus is **DENIED**. A Certificate  
7 of Appealability is **DENIED**. *See* Rule 11(a) of the Rules Governing Section 2254 Cases.

8 **IT IS SO ORDERED.**

9 Dated: June 6, 2016

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13 JAMES DONATO  
14 United States District Judge  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BILLY M. FELLS,  
Plaintiff,  
v.  
ELVIN VALENZUELA  
Defendant

Case No. 15-cv-01390-JD

## **CERTIFICATE OF SERVICE**

ELVIN VALENZUELA,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 6, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Billy M. Fells ID: AP9036  
California Men's Colony  
P.O. Box 8103  
San Luis Obispo, CA 93409

Dated: June 6, 2016

Susan Y. Soong  
Clerk, United States District Court

By: Lisa R. Clark  
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO